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MAILED

AUG 23 2011

OFFICE OF PETITIONS

In re Application
Akira Yamanaka et al.
Application No. 10/773,804
Filed: February 6, 2004
Attorney Docket No. **17474US02**

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:
: **DECISION ON APPLICATION**
: **FOR PATENT TERM ADJUSTMENT**
:

This is a decision on the "APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705)" filed August 9, 2011. Applicant requests that the determination of patent term adjustment be corrected from 1525 days to 1734 days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is ONE THOUSAND SEVEN HUNDRED THIRTY-FOUR (1734) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 13, 2011 the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1525 days. On August 9, 2011, applicant timely submitted the instant application for patent term adjustment¹. Applicant maintains that the first one of a first Office action on the merits, a Restriction Requirement, or a Notice of Allowance was mailed on March 6, 2007, fourteen months and 699 days after the filing of the application, thus, Examination delay pursuant to 37 CFR 1.702(a)(1) should be 699 days.

37 CFR 1.702(a)(1) provides that: Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

Mail at least one of a notification under 35 U.S.C. 132 or a notice of

¹ PALM records indicate that the issue fee was also paid on August 9, 2011.

allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

Applicants' argument is persuasive. The record supports a conclusion that a non-Final Office Action mailed March 6, 2007 is the first Office action in the application.

In this instance, the Office action mailed March 6, 2007 was not mailed within fourteen months of the filing date. As the Office failed to take action within the time provided for in 37 CFR 1.702(a)(1), an adjustment to the Patent Term Adjustment should have been made in the amount of 699 days from April 6, 2005 to March 6, 2007. As such, the period of adjustment for Office delay under 37 CFR 1.702(a)(1) is 699 days. The period of adjustment for Office delay of 490 days will be removed and a period of 699 days will be entered.

Thus the patent term adjustment at the time the Notice of Allowance was mailed was 1734 days (699 "A delay" days + 1035 "C delay" days - 0 Applicant delay days), not 1525 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE THOUSAND SEVEN HUNDRED THIRTY-FOUR (**1734**) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10773804

Search

Explanation of PTA Calculation

Explanation of PTE Calculation

PTA Calculations for Application: 10773804

Application Filing Date	02/06/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	1525
A Delays	490	PTO Manual Adjustment	209
B Delays	0	Applicant Delay (APPL)	0
C Delays	1035	Total PTA (days)	1734

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
80	08/20/2011		P028	Adjustment of PTA Calculation by PTO	699		0
79	08/20/2011		P028	Adjustment of PTA Calculation by PTO		490	0
69	05/13/2011		MN/-	Mail Notice of Allowance			0
68	05/10/2011		OAR	Office Action Review			0
67	05/10/2011		OAR	Office Action Review			0
66	05/10/2011		IREV	Issue Revision Completed			0
65	05/10/2011		DVER	Document Verification			0
64	05/09/2011		N/-	Notice of Allowance Data Verification Completed			0
63	05/09/2011		DOCK	Case Docketed to Examiner in GAU			0
62	05/06/2011		EX.R	Reasons for Allowance			0
61	05/06/2011		.CNTA	Allowability Notice			0
58	04/01/2011		BD.A	Amendment/Argument after BPAI Decision			0
57	02/02/2011	04/04/2008	MAPDP	Mail BPAI Decision on Appeal - Affirmed in Part	1035		37
56	02/01/2011		APDP	BPAI Decision - Examiner Affirmed in Part			0
55	03/14/2009		AP_DK_M	Docketing Notice Mailed to Appellant			0
54	03/14/2009		APAS	Assignment of Appeal Number			0
53	02/13/2009		APWD	Appeal Awaiting BPAI Docketing			0
52	01/28/2009		MRBNE	Mail Reply Brief Noted by Examiner			0
51	01/22/2009		RBNE	Reply Brief Noted by Examiner			0
48	11/24/2008		FWDX	Date Forwarded to Examiner			0
47	11/10/2008		APRB	Reply Brief Filed			0
46	10/01/2008		PACC	Exam. Ans. Review Complete			0
45	09/17/2008		MAPEA	Mail Examiner's Answer			0
44	09/15/2008		APEA	Examiner's Answer to Appeal Brief			0
43	07/02/2008		APBR	Appeal Brief Review Complete			0
42	07/02/2008		FWDX	Date Forwarded to Examiner			0
41	06/27/2008		AP.B	Appeal Brief Filed			0
40	05/27/2008		MAPCP	Mail Appeals conf. Proceed to BPAI			0
39	05/23/2008		APCP	Pre-Appeals Conference Decision - Proceed to BPAI			0
38	04/04/2008		AP.C	Request for Pre-Appeal Conference Filed			0
37	04/04/2008		N/AP	Notice of Appeal Filed			0
36	03/21/2008		MCTAV	Mail Advisory Action (PTOL - 303)			0
35	03/17/2008		CTAV	Advisory Action (PTOL-303)			0
34	03/10/2008		FWDX	Date Forwarded to Examiner			0
33	03/07/2008		A.NE	Amendment after Final Rejection			0
32	01/07/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
31	01/04/2008		CTFR	Final Rejection			0
29	11/05/2007		FWDX	Date Forwarded to Examiner			0
28	10/22/2007		A...	Response after Non-Final Action			0
27	08/02/2007		MCTNF	Mail Non-Final Rejection			0
26	08/01/2007		CTNF	Non-Final Rejection			0
24	05/24/2007		FWDX	Date Forwarded to Examiner			0
23	05/21/2007		A...	Response after Non-Final Action			0
22	03/06/2007	11/01/2005	MCTNF	Mail Non-Final Rejection	490		19
21	03/02/2007		CTNF	Non-Final Rejection			0
20	02/27/2007		DOCK	Case Docketed to Examiner in GAU			0
18	07/28/2006		DOCK	Case Docketed to Examiner in GAU			0
17	07/11/2006		C.AD	Correspondence Address Change			0
16	07/11/2006		PA..	Change in Power of Attorney (May Include Associate POA)			0
19	07/01/2005		RLIM	Response to Notice of Lost Image			0
15	04/14/2005		MNLIM	Mail Notice of lost Image document			0
14	04/14/2005		NLIM	Notice of lost Image document			0
13	03/01/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0

12	03/01/2005	DOCK	Case Docketed to Examiner in GAU	0
11	07/29/2004	WROIPE	Application Return from OIPE	0
10	07/29/2004	ROIPE	Application Return TO OIPE	0
9	07/29/2004	OIPE	Application Dispatched from OIPE	0
8	07/29/2004	COMP	Application Is Now Complete	0
7	07/07/2004	ADDFLFE	Additional Application Filing Fees	0
6	07/07/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	05/10/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	03/17/2004	L194	Cleared by OIPE CSR	0
3	03/17/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	02/20/2004	SCAN	IFW Scan & PACR Auto Security Review	0
1	02/06/2004	IEXX	Initial Exam Team nn	0
0.5	02/06/2004	EFILE	Filing date	0

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